

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

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MONSANTO COMPANY and MONSANTO :
TECHNOLOGY LLC, :
: Plaintiffs, :
v. : Case No. 4:09-cv-686 ERW
: E.I. DU PONT DE NEMOURS AND COMPANY and :
PIONEER HI-BRED INTERNATIONAL, INC., :
: Defendants. :
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**DUPONT'S AND PIONEER'S CROSS-MOTION TO COMPEL PRODUCTION OF
WITHHELD DOCUMENTS OR, IN THE ALTERNATIVE, FOR AN *IN CAMERA*
REVIEW OF DOCUMENTS ON MONSANTO'S PRIVILEGE LOG**

Defendants E.I. du Pont de Nemours and Company and Pioneer Hi-Bred International, Inc. (collectively “Defendants” or “DuPont”), respectfully file this cross-motion to compel production of withheld documents or, in the alternative, for an *in camera* review of a substantial sample of documents listed on Monsanto’s privilege log whose corresponding privilege log entries contain descriptions that are identical or substantially similar to the descriptions on DuPont’s and Pioneer’s privilege log challenged in Monsanto’s Ninth Motion to Compel.

As set forth in the accompanying memorandum in opposition to Monsanto’s Ninth Motion to Compel and in support of DuPont’s and Pioneer’s Cross-Motion to Compel, DuPont and Pioneer believe the Court should deny Monsanto’s Ninth Motion to Compel and refuse to grant Monsanto any of the relief it seeks because DuPont’s and Pioneer’s privilege log entries provide Monsanto with all the information that is required and necessary to allow them to evaluate the claims of privilege. In the alternative, in the event the Court adopts Monsanto’s

proposed legal standards and/or decides to conduct an *in camera* review of documents on DuPont's and Pioneer's privilege log, then the Court should reach the same conclusions with regard to Monsanto's privilege log and should grant DuPont and Pioneer the same relief it concludes is appropriate with regard to Monsanto's Ninth Motion to Compel.

Defendants have satisfied the meet and confer requirement of Local Rule 3.04. On at least three occasions, DuPont and Pioneer have sent Monsanto letters identifying Monsanto privilege log entries that are identical or similar to the DuPont and Pioneer privilege log entries Monsanto is challenging, including on February 17, March 30, and April 7, 2011. Thereafter, on April 22, 2011, Monsanto revised some of the entries on entries on its privilege log, *see* Ex. 9 to Memorandum in Opposition to Monsanto's Ninth Motion to Compel and in Support of DuPont's and Pioneer's Cross-Motion to Compel, but Monsanto failed to revise many of its entries that are identical or similar to the DuPont and Pioneer entries that Monsanto is now challenging in its Ninth Motion to Compel. Additional efforts to resolve this dispute would be futile. The Court should apply the same legal standards and grant DuPont and Pioneer the same relief, if any, that the Court concludes is appropriate with regard to Monsanto's Ninth Motion to Compel.

Dated: May 27, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 27, 2011, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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